

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2161 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

(Sr.No. 2 to 5 : No)

JASHVANTLAL M. PAREKH AND ORS
VS
MANAGER, WESTERN RAILWAY

Appearances :

M/s M.G.Doshit and Co. for the petitioner

(Date : 07.08.1996)

:: ORAL JUDGMENT ::

1. This Special Civil Application has been filed under Article 226 of the Constitution of India, seeking directions against the Railway Administration to grant "No Objection Certificate" to the plan submitted by the petitioner society so as to permit them to construct the compound wall on their land bearing survey No.106/1 paiki at a 50 feet distance from the center of Junagadh - Veraval Railway Line.

2. The say of the petitioners is that, on the either side of the Railway Line, within a short distance from the petitioner's property, several constructions have been made at a 50 ft distance from the center of the railway line. Some instances have been given in para-9 of the petition. In the rejoinder, it is stated that the complete control line of Jitendra Park Society situated on the plot bearing survey No.108 has been constructed on the railway line boundary itself. The another instance has been given where one multi-storeyed residential building viz Ushakiran has been constructed within few feet from the Junagadh - Veraval railway line. It is further submitted that, on Junagadh-Veraval railway line, several multi storeyed residential buildings have been constructed within a few feet from the railway line boundary wall.

3. Mr D.N.Ganguli, Divisional Engineer, Western Railway, Bhavnagar Para, has filed an affidavit in reply. It is submitted that, as a part of land management, certain guidelines have been laid down in para 3728 of the Way and Works Manual not only to preventing encroachments on railway lands, but also to protect the railway's interest for future expansion for Broad Gauge Conversion and to avoid any casualties by collapsing of building on railway line, as it so happened recently in Akashdeep Apartments collapsed on the railway line in Bombay near Grand Road Railway Station. It is pointed out that the standing instructions are not to allow constructions within 30 metres from the railway line boundary. The relevant instructions issued by the Railway Board as contained in Circular dated July 18, 1979 issued by the Chief Engineer is placed on record. Another letter dated 7.1.1983 issued by the Divisional Railway Manager (Works), Bhavnagar has also been placed on record. It is pointed out that, in some cases, certain constructions have been raised in breach of the guidelines on account of the permission given by the District Collector/D.D.O. while converting agriculture lands into non-agriculture lands. It is asserted that the Railway Administration has not given any "No Objection Certificate" permitting to raise the constructions within a distance of 30 meters from the railway line boundary. In some cases where there were old constructions, on humanitarian grounds, they had to be regularised.

4. It is contended by mr Doshit, learned counsel appearing for the petitioner that "No Objection Certificate" has been withheld by the respondent

administration illegally. It is further submitted that the respondents have acted in a most arbitrary and discriminatory manner in the matter of issuing "No Objection Certificate". It is further submitted that the deviation from the rule has created hardships and injustice which has resulted into impermissible discrimination. learned counsel relies on the decision of the Apex Court reported in AIR 1984 SC 1291. The said case pertains to the service matter wherein it was noticed that it was found that there was deviations in following the application of the rotational rule of seniority when there is large deviation from the quota rule in making promotions is bound to create hardship and injustice and result in impermissible discrimination. The Court, following the decision reported in AIR 1983 SC 769, held that with the collapse of the quota rule, the rule of seniority set out in Rule 1 (f) (iii) also went.

5. In my view, the aforesaid case is of no assistance to the petitioner. In the facts of the case, there is nothing to show except one case of regularisation whether the railway administration has issued "No Objection Certificate" in breach of the instructions. The only grievance of the petitioner is that the constructions have been raised by various parties in breach of the rule. If some constructions have been raised in breach of the rule, without obtaining the N.O.C. from the railway administration, that cannot be a ground for issuing a writ of mandamus compelling the respondents to issue N.O.C. in disregard to the instructions. It is a settled law that there cannot be discrimination on the ground of wrong precedent. One of the objects of the rule is to avoid any casualties of collapsing of the buildings on the railway line. In view of this, it will be hazardous for this Court in exercise of power under Article 226 to direct the respondents to issue the "No Objection Certificate" in breach of the instructions.

6. Considering the facts and circumstances of the case, I am not inclined to interfere in the matter in exercise of powers under Article 226 of the Constitution of India.

7. In view of the aforesaid, there is no merits in this Special Civil Application and the same is accordingly rejected. Rule discharged.

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